

RECORDATION NO 27419-B FILED

APR 16 '09

4:10 PM

SURFACE TRANSPORTATION BOARD

# FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832

MYLES L. TOBIN  
(312) 252-1500  
mtobin@fletcher-sippel.com

Phone: (312) 252-1500  
Fax: (312) 252-2400  
www.fletcher-sippel.com

April 15, 2009

*Via Overnight (Next Business Day) Delivery*

Ms. Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001  
Attn: Office of Recordations

Dear Secretary Quinlan:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are an original and two (2) copies of a Memorandum of First Amendment to Loan and Security Agreement, dated as of April 8, 2009, a secondary document as defined in the Board's Rules for the Recordation of Documents, and an original and two (2) copies of a First Amended and Restated Assignment of Rents and Lessor's Interests in Leases, dated as of April 8, 2009, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed documents relate to a Memorandum of Lease previously filed with the Board under Recordation Number 27419 and an Assignment of Rents and Lessor's Interests in Leases previously filed with the Board under Recordation Number 27419-A.

The names and addresses of the parties to the first enclosed documents are:

Debtors:

East Penn Railroad, LLC  
505 South Broad Street  
Kennett Square, Pennsylvania 19348

Middletown & New Jersey Railroad, LLC  
505 South Broad Street  
Kennett Square, Pennsylvania 19348

Secured Party:

Bank of America, N.A., as successor in interest  
to LaSalle Bank National Association  
135 South LaSalle Street  
Chicago, Illinois 60603



# FLETCHER & SIPPEL LLC

Ms. Anne K. Quinlan  
April 15, 2009  
Page 2

A description of the railroad equipment is included as Exhibit A to the documents. Included in the property covered by the aforesaid First Amendment to Loan and Security Agreement are locomotives, rolling stock and equipment intended for use and related to interstate commerce, and includes locomotives, rolling stock or equipment acquired by Debtors or its or their successors **after the date** of the Loan and Security Agreement.

Also enclosed is a check in the amount of \$82.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return one stamped copy of each enclosed document to the undersigned.

Respectfully submitted,



Myles L. Tobin  
Attorney for Secured Party

Enclosures

APR 16 '09

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**MEMORANDUM OF FIRST AMENDMENT TO  
LOAN AND SECURITY AGREEMENT**

SURFACE TRANSPORTATION BOARD

THIS MEMORANDUM OF FIRST AMENDMENT LOAN AND SECURITY AGREEMENT (the "Memorandum") dated as of April 8, 2009, is made by and between Bank of America, N.A., a national banking association, as successor in interest to LaSalle Bank National Association, a national banking association, 135 South LaSalle Street, Chicago, Illinois 60603, (the "Bank"), and East Penn Railroad, LLC, a Delaware Limited Liability Company and Middletown & New Jersey Railroad, LLC, a Delaware Limited Liability Company, with their chief executive office and principal place of business at 505 South Broad Street, Kennet Square, Pennsylvania 19348 (collectively the "Borrowers").

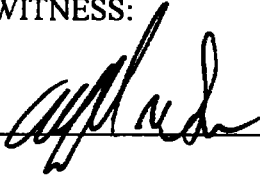
Borrowers and the Bank hereby state the following:

1. East Penn Railroad, LLC and the Bank are parties to that certain Loan and Security Agreement dated as of March 20, 2008 (the "Loan Agreement") (capitalized terms used herein and not otherwise defined shall have the meaning given in the Loan Agreement), whereby the Bank loaned East Penn Railroad, LLC certain funds *inter alia* to facilitate the purchase or financing of the Locomotives and Railcars more specifically identified on Exhibit A attached hereto and made a part hereof and any Locomotives and Railcars acquired by East Penn Railroad, LLC subsequent to March 20, 2008.
2. The Bank has recorded its security interest created by the terms of the Loan Agreement by filing of a Memorandum of Loan and Security Agreement and Assignment of Rents and Lessor's Interest in Leases, filed with the Surface Transportation Board on March 24, 2008 and assigned Recordation Numbers 27419 and 27419-A.
3. Borrowers and the Bank wish to continue the security interests that were created or referenced in the foregoing recordations, and wish to amend the Bank's security interest by including all interests arising pursuant to a First Amendment to the Loan and Security Agreement, dated as of April 1, 2009, between the parties, which amends the Loan Agreement by, *inter alia*, adding Middletown & New Jersey Railroad, LLC as a co-borrower.
4. Borrowers' obligations under the Loan Agreement and other loan documents are evidenced by and payable in accordance with the Loan Agreement, as amended by the First Amendment to the Loan and Security Agreement.
5. Pursuant to the terms of the Loan Agreement, as amended by the First Amendment to the Loan and Security Agreement and to secure the payment and performance of any and all of Borrowers' obligations to the Bank, Borrowers granted to the Bank a continuing, first priority security interest in and to, and chattel mortgage lien on, all of the Borrowers' right, title and interest in and to the Locomotives and Railcars to have and to hold all and every part of the Locomotives and Railcars unto the Bank, its

successors and assigns, including but not limited to any Locomotives and Railcars acquired by the Borrowers subsequent to April 1, 2009, for its and their own use and benefit forever.

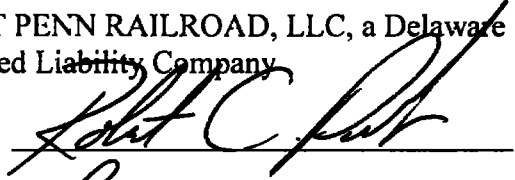
IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed as of the date first above written.

WITNESS:

  
\_\_\_\_\_

EAST PENN RAILROAD, LLC, a Delaware  
Limited Liability Company


By:

  
\_\_\_\_\_

Title:

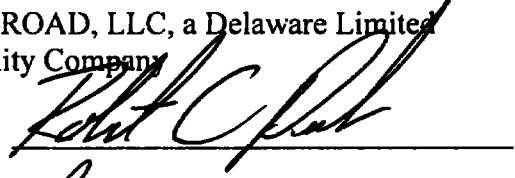
PRESIDENT  
\_\_\_\_\_

WITNESS:

  
\_\_\_\_\_

MIDDLETOWN & NEW JERSEY  
RAILROAD, LLC, a Delaware Limited  
Liability Company

By:

  
\_\_\_\_\_

Title:

PRESIDENT  
\_\_\_\_\_

WITNESS:

\_\_\_\_\_  
\_\_\_\_\_

BANK OF AMERICA, N.A., a National  
Banking Association, as successor in interest  
to LASALLE BANK NATIONAL  
ASSOCIATION, a National Banking  
Association

By: \_\_\_\_\_

Title: \_\_\_\_\_

successors and assigns, including but not limited to any Locomotives and Railcars acquired by the Borrowers subsequent to April 1, 2009, for its and their own use and benefit forever.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed as of the date first above written.

WITNESS:

EAST PENN RAILROAD, LLC, a Delaware  
Limited Liability Company

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS:

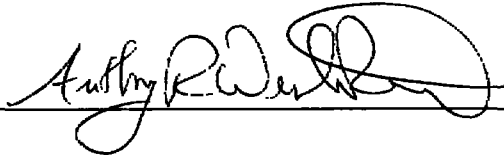
MIDDLETOWN & NEW JERSEY  
RAILROAD, LLC, a Delaware Limited  
Liability Company

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS:

  
\_\_\_\_\_

BANK OF AMERICA, N.A., a National  
Banking Association, as successor in interest  
to LASALLE BANK NATIONAL  
ASSOCIATION, a National Banking  
Association

By:  \_\_\_\_\_

Title:  \_\_\_\_\_

## **EXHIBIT A**

### **Locomotives and Railcars:**

- 1) PRL 2206 (U23B) at Kennett Square (Wilmington Northern/Octoraro)
- 2) EPRY 7836 (B30-7) at Kennett Square (Wilmington Northern/Octoraro)
- 3) EPRY 7874 (B30-7) at Kennett Square (Wilmington Northern/Octoraro)
- 4) EPRY 7811 (B30-7) at Kennett Square (Wilmington Northern/Octoraro)
- 5) PRL 2202 (U23B) at Rheinholds (Lancaster Northern)
- 6) PRL 2204 (U23B) at Rheinholds (Lancaster Northern)
- 7) EPRY 3153 (B23-7) at Quakertown (Quakertown Line)
- 8) EPRY 5114 (B23-7) at Quakertown (Quakertown Line)
- 9) PRL 57 (GP-10) at N. Philadelphia (N. Philadelphia Industrial Park)
- 10) PRL 7554 (GP-10) at East Greenville (Perkiomen)
- 11) PRL 81 (NW-2) at Bristol (Bristol Industrial Park)
- 12) EPRY 9008 (NW-2) at King of Prussia (Chester Valley)
- 13) EPRY 52 (SW – 900) at Boyertown (Colebrookdale)
- 14) EPRY 44 (GE 50 Ton) at Topton (Kutztown)
- 15) TM 21 (Trackmobile) at Manheim (Manheim)
- 16) & 17) PRL 5106 and PRL 5107 - 2 ballast cars used on the Wilmington Northern/Octoraro Lines. They cannot be interchanged.
- 18) General Electric 44-ton diesel locomotive: MNJ-2
- 19) General Electric 44-ton diesel locomotive: MNJ-1
- 20) EMD GP-9 diesel locomotive: MNJ-773

**\*\*\* All equipment is owned not leased. No equipment is leased to any third parties.**

STATE OF PENNSYLVANIA

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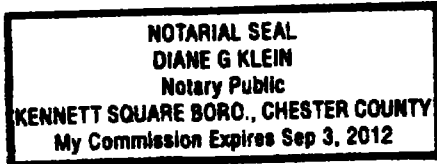
) SS

COUNTY OF CHESTER )

)

On this 7<sup>th</sup> day of April, 2009, before me, a Notary Public of the County and State aforesaid, personally appeared Robert C. Parker to me personally known, who being by me duly sworn, says that he is the President of East Penn Railroad, LLC, a Delaware limited liability company, that said instrument was signed on behalf of said company by authority of its members, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

**AS WITNESS** my hand and notarial seal.



Diane G Klein  
Notary Public

**My Commission Expires:**

Sept 3, 2012

STATE OF Pennsylvania )  
COUNTY OF Chester ) SS

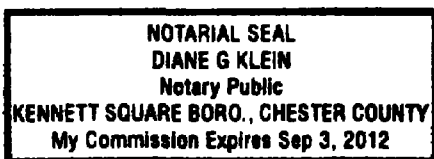
) SS

COUNTY OF Chester

)

On this 7<sup>th</sup> day of April, 2009, before me, a Notary Public of the County and State aforesaid, personally appeared Robert C. Parker to me personally known, who being by me duly sworn, says that he is the President of Middletown & New Jersey Railroad, LLC, a Delaware limited liability company, that said instrument was signed on behalf of said company by authority of its members, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

**AS WITNESS** my hand and notarial seal.



Jane M. Klein  
Notary Public

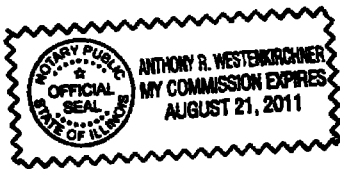
**My Commission Expires:**

Sept. 3, 2012

STATE OF ILLINOIS                    )  
  ) ss  
COUNTY OF COOK                    )

On this 8<sup>th</sup> day of April, 2009, before me, a Notary Public of the County and State aforesaid, personally appeared Stefan Lorb to me personally known, who being by me duly sworn, says that he is the Vice President of Bank of America, N.A., a national banking association, as successor in interest to LaSalle Bank National Association, a national banking association, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

AS WITNESS my hand and notarial seal.



Anthony R. Westenkirchner  
Notary Public

My Commission Expires:

8/21/2011